IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 1059 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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GAJENDRASINH @ RAJENDRASINH @ RAJU UDAYSINH SINDHA

Versus

STATE OF GUJARAT

Appearance:

MR MM TIRMIZI for Petitioner

MR HL JANI, LD. APP for Respondent

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 13/07/2001

ORAL JUDGEMENT

1. Heard Mr.M.M.Tirmizi, learned advocate for the petitioner and Mr.H.L.Jani, learned APP for the respondent - State.

2. In the present petition, the show cause notice

was issued on 30/3/2000 by the Sub-Divisional Magistrate, Bharuch under Section 59 of the Bombay Police Act, 1951 (hereinafter shall be referred to as "the Act") and the order of externment is dated 18/10/2000 and the order of Appellate Authority is dated 9/12/2000. Both the above orders are challenged in the present petition by the petitioner.

3. Mr.M.M.Tirmizi, learned advocate for the petitioner has submitted that in show cause notice, the concerned authority has come to the conclusion to remove the present petitioner for a period of two years from the Bharuch, Narmada, Surat and Vadodara Districts. But no reasons have been assigned by the concerned authority. No reason was given why the petitioner has been removed from these areas, wherein no such activities have been carried out and alleged to have been carried out by the petitioner. Not only that, no offence has been registered against the present petitioner in respect to adjoining Districts. Therefore, it is a duty of the concerned authority to disclose the reasons as to why the petitioner has been removed from adjoining area. The second contention which has been raised by Mr.M.M.Tirmizi, learned advocate for the petitioner is that looking to the offences which have been registered against the present petitioner in respect to Sr.No.2, the offence under C.R.No.II-78/99 is relating to Section 88 of the Indian Penal Code and Sr.Nos.3 and 4 are not relating to the Indian Penal Code, but they are offences under Section 110 of Criminal Procedure Code. Therefore, he has also submitted that according to the provisions of Section 56 of the Act when there are reasonable grounds for believing that such person is engaged or is about to be engaged in the commission of an offence involving force or violence or an offence punishable under Chapter XII, XVI or XVII of the Indian Penal Code, or in the abetment of any such offence, then the order of externment can be passed against the petitioner. Therefore, Mr.M.M.Tirmizi, learned advocate for the petitioner has submitted that out of 4 offences, 3 offences are not relating to Chapter-XII, XVI or XVII of the Indian Penal Code. However, the orders have been passed by the concerned authority under Section 56 of the Act considering all the 4 offences against the petitioner. He has also submitted that in the order of externment, which has been passed in Externment Case No.5 of 2000 by the Sub-Divisional Magistrate, Bharuch on 18/10/2000, no specific reasons have been given as to why and on what material the authority has come to the said conclusion. The concerned Authority has only described the evidence as it is, but his own conclusion is not

there and no reasons have been given by the concerned Authority in support thereof. He has further submitted that even in the final order of externment, there is no reasons given by the concerned Authority as to why the petitioner has been removed from Bharuch, Narmada, Surat and Vadodara Districts. Therefore, in absence of such reasons, the order of externment which has been passed by the concerned Authority is illegal and invalid and the same is required to be quashed and set aside. He has also relied upon the decisions in the case of KATHI HARSUR RUKHAD v. STATE OF GUJARAT & ANOTHER, reported in 1986 (1) GLR 682 and in the case of MER BHIMA MERU GORANIYA v. STATE OF GUJARAT AND OTHERS, reported in 2000 CRI.L.J. 4215.

4. Mr.H.L.Jani, learned APP appearing on behalf of the respondent - State has submitted that looking to the materials placed on record as well as statement of secret witnesses and looking to the further fact that sufficient opportunity was given to the petitioner, the respondent Authority has rightly passed the externment order and similarly, the appellate authority has also rightly rejected the appeal which has been filed by the present petitioner. According to him, both the orders, which have been passed by the concerned Authorities, are legal and valid. He has also submitted that looking to the material on record, the authority deemed it fit to extern the petitioner from certain areas which are adjoining to the place of his activities and, therefore, there is no need to supply any reasons and, therefore, the order passed by the concerned authority is legal and valid.

5. I have considered the submissions of both the learned advocates. I perused the show cause notice as well as final order and the order of the appellate authority. Looking to the show cause notice itself it is clear that the concerned authority has proposed to extern the petitioner from certain areas, when there was no reason to support this proposal. There is no indication in the show cause notice that in adjoining districts any offences, either registered or unregistered, have been committed by the present petitioner. The offences which have been registered against the present petitioner relate to Bharuch area and no other area and, therefore, when there is a specific provision enacted by the Legislature under Section 59 of the Act to give an effective reasonable opportunity to the petitioner before passing the externment order, the same ought to have been given to the petitioner. It is a duty of the concerned authority to disclose all the materials which have been taken into account by the concerned authority and which

are adverse to the petitioner, so the petitioner can effectively put forward his defence and also file an effective reply against the show cause notice. The purpose of enacting of Section 59 of the Act, is to give reasonable opportunity to the petitioner. Therefore, if the reasons or grounds are not indicated in the show cause notice, then it amounts to denying the reasonable opportunity to the petitioner and, therefore, the very purpose of Section 59 is frustrated. In the externment order, the authority has also not given any reasons and there was no contemporaneous material. There was no material of any contemporaneous to indicate that petitioner has roots or moorings in contiguous districts which can possibilise his operations while staying in those districts, as the order of externment.

6. The relevant observation, which has been made by the Division Bench of this Court in above referred case 1986 (1) GLR 682, in the form of head note is quoted as under :-

"Before the proposed externee can be said to have been given reasonable opportunity to tender explanation, all material allegations of general nature have to be pointed out to him. The aforesaid allegations in the show cause notice are totally vague. It is not even indicated during which period the concerned petitioner is alleged to have indulged in the concerned nefarious activities. There is equally no whisper about the area in which such alleged nefarious activities were indulged in by the concerned petitioner. Thus, both from the point of view of period as well as area, no indication whatsoever is given to the petitioners, the proposed externees, so that they can meet these allegations effectively. On the peculiar facts of this case and in the light of the framing of the allegations in the show cause notices, it must be held that both the petitioners were not given any reasonable opportunity to put forward their defence. The legal position on this point is well settled in the case of State of Gujarat v. Mehbubkhan, A.I.R. 1968, S.C. 1468.

The statute has enjoined upon them to give proper show cause notices under sec.59. On the facts of this case, therefore, it must be held that the notices were totally vague. The petitioners were denied reasonable opportunity to meet the allegations contained in the show cause notices

and consequently, the resultant externment order in each of these two cases was bad in law and null and void.

In the second decision reported in 2000 (1) CRI.L.J. 4215, the relevant paragraphs are paragraphs Nos.(4) and (5) which are quoted as under :-

"4. Having regard to rival side contentions, a look at the notice under Section 59 indicates that the authority stated that it is proposed to extern the petitioner for a period of two years from the areas of Porbandar district as well as contiguous districts of Jamnagar, Junagadh, Rajkot City, Rajkot (Rural) and Amreli. The reasons or grounds for this proposal are not indicated in the notice. Against this, if the order of externment is seen, it is stated that the petitioner is externed from the areas of Porbandar District as well as contiguous districts of Jamnagar, Junagadh, Rajkot City and Rajkot (Rural) for a period of two years, as he may operate by staying in nearby place with the help of his associates, speedy transport and communication facilities.

5. The outcome is that, these reasons, were not made known to the petitioner, which could have possiblised for the petitioner to give an appropriate reply to the notice and, therefore, the very purpose of providing Section 59 notice is frustrated. Further, the authority has given reasons in absence of any contemporaneous material to indicate that the petitioner has routes or moorings in the contiguous districts, which can possibilities his operations while staying in those districts, as indicated in the order of externment. The order, therefore, is bad in the eyes of law and cannot be sustained. The petition deserves to be allowed."

The relevant head-note (C) in the recent decision of this Court in the Case of MUSTUFAMIYA PIRSAHEDMIYA SAIYED v. STATE OF GUJARAT & ANOTHER, reported in 1999 91) G.L.H. 913, is as under :-

"(C) Bombay Police Act, 1951 - S.59 - Externee is ordered to be externed from Ahmedabad City, Ahmedabad Rural, Gandhinagar, Kheda and Vadodara - No reason given - Whereas activities confined to Ahmedabad Rural - Order quashed.

Another non-application of mind in the show cause notice is exposed from the concluding portion where the externing authority has mentioned that the petitioner should be externed from districts of Ahmedabad City, Ahmedabad Rural, Gandhinagar, Kheda and Vadodara. No reason has been given in the show cause notice why externment from these districts was proposed when the activities of the petitioner were confined only to the district of Ahmedabad Rural."

7. In light of the aforesaid observations and looking to the facts which are on record and when no reason has been assigned in respect to the proposed action to remove the present petitioner from adjoining districts and in absence of contemporaneous material, such decision is apparently bad and illegal. No effective reasonable opportunity has been given to the petitioner and respondent - Authority has not given any reasons in support of his proposed conclusion and, therefore, in my opinion the order of externment dated 16/10/2000 and the order of appellate authority dated 9/12/2000 are required to be quashed and set aside.

8. In the result, the present petition is allowed. The order of externment dated 16/10/2000 passed by the Sub-Divisional Magistrate, Bharuch and the order passed by the appellate authority dated 9/12/2000 are quashed and set aside. Rule is made absolute. Direct service is permitted.

(H.K.RATHOD,J.)

(vrpanchal)**